

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION****SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS****February 2008**

<b>CONTACT PERSON</b>	<b>BOARDS AND COMMISSIONS</b>	<b>DATE</b>	<b>TIME/ LOCATION</b>
Theresa Ennis	Board of Accountancy	12	8:30 am-12:30 pm
Leon Lewis	Board of Appraisers	20	10:00 am-12:00 pm
Leon Lewis	Board Architects and Interior Designers	<b>No meeting scheduled for this month</b>	
Dorothy Thomas	Board of Barber and Cosmetology	04	10:00 am-12:00 pm
George Beatty	Boxing and Wrestling Commission	12	7:00-pm-9:00 pm
Dorothy Thomas	Board of Funeral Directors	07	1:30 pm-5:00 pm
Theresa Ennis	Board of Professional Engineers	28	9:30 am-12:00 pm
Leon Lewis	Board of Real Estate	12	10:30 am-12:30 pm
Pamela Peters	Board of Industrial Trades	19	10:00 am-1:00 pm
	Asbestos Electrical Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 941 North Capitol Street, NE., Suite 7616, Washington, DC 20001. For further information on this schedule, please contact Ms. Jackie Wright at 202-442-4435.

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS****NOTICE OF PROPOSED ACTION****Reorganization and Rightsizing of District of Columbia Public Schools****AND****NOTICE OF COMMUNITY MEETING****Reorganization and Rightsizing Plan for District of Columbia Public Schools****on****Wednesday, February 27, 2008****6:00 p.m.****McKinley Tech Senior High School****151 T Street, NE****Washington, DC 20002**

The Mayor and the Chancellor of the District of Columbia Public Schools (DCPS) announce a proposed action to close and/or consolidate school programs and buildings through a reorganization and rightsizing plan, pursuant to Title 5 (Board of Education), Sec. 3607 of the D.C. Municipal Regulations.

In order to provide high-quality, innovative, and rigorous educational opportunities to all DCPS students, the DCPS school system must be reorganized to meet its current needs. Most DCPS Schools are under-enrolled. The inefficiencies of managing the administration, staffing and facilities in underutilized schools limits DCPS's ability to offer a full and comprehensive curriculum, programs, services, and opportunities for all of its students. By rightsizing the school system, either through closing, consolidating, or realigning schools and programs, DCPS will be able to offer parents and students rich, quality educational opportunities across the city. By more efficiently utilizing existing resources, the District can ensure that these resources and investments have the greatest impact on increasing student achievement.

Details of the proposal, including supporting criteria, findings, and recommendations, can be found online at <http://www.k.12.dc.us/rrr/rrr.htm> and at <http://edreform.dc.gov>.

The following schools and programs are proposed for closing as of the end of the 2007-2008 school year, unless a later year is listed.

<b>Elementary Schools</b>		
Benning Elementary School	Park View Elementary School (program consolidation in 2008 with Bruce Monroe Elementary School at Park View Elementary site; Park View building closure no earlier than 2011 after Bruce Monroe modernization)	
<b>Middle and Senior High Schools</b>		
Garnet-Patterson Middle School (program consolidation in 2008 with Shaw Middle School at Garnet Patterson Middle School site; Garnet Patterson building closure no earlier than 2011 after Shaw Middle School modernization)	Merritt Middle School	

The purpose of the meeting is to solicit public input regarding the proposed action. This is a combined meeting on each of the proposed closing actions. Specifically, the Mayor and Chancellor wish to receive testimony regarding the current and prospective educational needs of pupils in the District of Columbia public schools, educational programs that can address these needs, and support systems needed for safety and efficiency.

The community meeting on this proposed action, pursuant to Title 5 (Board of Education), Secs. 400 and 3608 of the D.C. Municipal Regulations, on Wednesday, February 27, 2008, at 6:00 p.m. at McKinley Tech Senior High School, 151 T Street, NE, Washington, DC 20002.

Members of the public are invited to testify at the community meeting. Testimony may be limited to five minutes per witness. Those wishing to testify should contact Traci Higgins in the Office of the Chancellor via email at [Traci.Higgins@dc.gov](mailto:Traci.Higgins@dc.gov) or by telephone at (202) 442-5615 by 5:00 p.m. on Tuesday, February 26, 2008. Witnesses should bring three (3) copies of their written testimony to the community meeting.

Members of the public may submit written testimony which will be made part of the official record. Copies of written statements should be submitted to Ms. Cheryl Vincent, Receptionist, DCPS, Office of the Chancellor, 825 North Capitol Street, NE, 9<sup>th</sup> Floor, Washington, D.C. 20002, no later than 5:00 p.m., Friday, February 29, 2008.

If there are members of the public who need interpretation services, please contact Traci Higgins in the Office of the Chancellor via email at [Traci.Higgins@dc.gov](mailto:Traci.Higgins@dc.gov) or by telephone at (202) 442-5615.

DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

Certification of Filling Vacancies  
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Kraig Jennett  
Single-Member District 1A03

DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS

Certification of Filling Vacancies  
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections and Ethics "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Oliver Tunda  
Single-Member District 1D02

District of Columbia  
Board of Elections and Ethics

Notice of Public Testing of Vote Counting System

The District of Columbia Board of Elections and Ethics hereby gives notice of the public test of the Board's vote counting systems for the February 12, 2008 Presidential Preference Primary Election.

The public test will be conducted on Saturday, February 9, 2008 at 9:00 a.m. in the Board's main office located at One Judiciary Square, 441 - 4<sup>th</sup> Street, N.W., Suite 250. For more information about the test, the public may call 202-727-2525.

**DISTRICT DEPARTMENT OF THE ENVIRONMENT  
AIR QUALITY DIVISION**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the District Department of the Environment located at 51 N Street, N.E., Washington, DC, intends to issue a permit to Mr. Mathew E. Melito to install and operate one (1) sixty (60) kW, natural gas fired emergency generator at 1375 E Street, N.E., one (1) sixty (60) kW, natural gas fired emergency generator at 2427 Martin Luther King Jr., Avenue, S.E., and one (1) sixty (60) kW, #2 diesel fired emergency generator at 3621 Benning Road, N.E.

The proposed permits to install and operate these three emergency generators are available for public review at AQD and copies may be made between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Abraham T. Hagos at (202) 535-1354.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. **Written comments postmarked after March 10, 2008 will not be accepted**

Address written comments to:

Stephen S. Ours,  
Chief, Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environmental  
51 N Street, N.E., 3rd Floor  
Washington D.C. 20002.

For more information, please contact Abraham T. Hagos, at (202) 535-1354.

**DISTRICT DEPARTMENT OF THE ENVIRONMENT  
AIR QUALITY DIVISION**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the District Department of the Environment located at 51 N Street, N.E., Washington, DC, intends to issue a permit to Mr. Jonathan Vanderhost to install and operate a Semi-down draft paint booth at 911 Franklin Street NE, Washington D.C.

The proposed permit to install and operate the paint spray unit is available for public review at AQD and copies may be made between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olivia Achuko at (202) 535-2997.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. **Written comments postmarked after March 10, 2008 will not be accepted**

Address written comments to:

Stephen S. Ours,  
Chief; Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environmental  
51 N Street, N.E., 3rd Floor  
Washington D.C. 20002.

For more information, please contact Olivia Achuko, at (202) 535-2997.



**DISTRICT DEPARTMENT OF THE ENVIRONMENT  
AIR QUALITY DIVISION**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the District Department of the Environment located at 51 N Street, N.E., Washington, DC, intends to issue a permit to Sereke Neway of Goye Enterprises to install and operate a Standard Tools and Equipment Company side downdraft spray paint booth, model SDD -1000 at 1824 Fenwick Street, NE, Washington D.C.

The proposed permit to install and operate the paint spray unit is available for public review at AQD and copies may be made between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olivia Achuko at (202) 535-2997.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must include the person's name, telephone number, affiliation, if any, mailing address, and statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. **Written comments postmarked after March 10, 2008 will not be accepted**

Address written comments to:

Stephen S. Ours  
Chief; Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environmental  
51 N Street, N.E., 3<sup>rd</sup> Floor  
Washington D.C. 20002.

For more information, please contact Olivia Achuko, at (202) 535-2997.

**DISTRICT DEPARTMENT OF THE ENVIRONMENT****NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 51 N Street, NE, Washington, D.C., intends to issue a permit to install and operate one (1) 400 kW diesel emergency generator at the Internal Revenue Service office located at 1111 Constitution Avenue, N.W. Washington D.C.

The application to construct/operate the generator and the draft permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olaniyan Tajudeen at (202) 535-2998.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours  
Chief, Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environment  
51 N Street, NE  
Washington D.C. 20002

**No written comments postmarked after March 8, 2008 will be accepted.**

For more information, please contact Olaniyan Tajudeen at (202) 535-2998.

**DISTRICT DEPARTMENT OF THE ENVIRONMENT****NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 51 N Street, NE, Washington, D.C., intends to issue a permit to install and operate the following diesel emergency generators at the Comcast of the District, LLC offices located at the following addresses in Washington D.C.:

1. One (1) 100 kW generator at 4528 Benning Rd. SE
2. One (1) 60 kW generator at 6503 Chillum Place, NE
3. One (1) 60 kW generator at 3201 New Mexico Avenue, NW
4. One (1) 125 kW generator at 900 Michigan Avenue, NE
5. One (1) 125 kW generator at 1351 Florida Avenue, NW
6. One (1) 100 kW generator at 4031 S. Capital Street, SE
7. One (1) 250 kW generator at 900 Michigan Avenue, NE

The application to construct/operate the generators and the draft permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Olaniyan Tajudeen at (202) 535-2998.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours  
Chief, Permitting and Enforcement Branch  
Air Quality Division  
District Department of the Environment  
51 N Street, NE  
Washington D.C. 20002

**No written comments postmarked after March 8, 2008 will be accepted.**

For more information, please contact Olaniyan Tajudeen at (202) 535-2998.

**DEPARTMENT OF HEALTH****CALL FOR NOMINATIONS****Perinatal Advisory Committee**

The District of Columbia Department of Health, Community Health Administration hereby gives notice of a call for nominations for persons interested in participating as a member of the **District of Columbia Department of Health Perinatal Advisory Committee (DOHPAC)**. Self nominations will be accepted.

On December 19, 2007, Mayor Adrian Fenty held a press conference to present the District's infant mortality rate for 2005. The Center for Statistics revealed that between 1996 and 2005 the infant mortality rate (IMR) has trended downward slightly. However, over the last two years we have seen an increase in IMR from 10.2 in 2003 to 11.8 in 2004 and finally to 13.6 deaths per 1000 lives in 2005. During that press conference, Dr. Carlos Cano had the privilege to present the Citywide Action Plan aimed at addressing infant mortality in the District. You may access the infant mortality report and/or the Citywide Action Plan at the following link:  
<http://doh.dc.gov/doh/site/default.asp>.

The Committee is being established to assist the Department of Health, Community Health Administration to explore and cultivate additional strategies and interventions directed at reducing the District's infant mortality rate. The Committee will focus on decreasing the health disparities in identified residential areas; improving the pre- and interconception health outcomes of women of child-bearing age; and perinatal outcomes and other issues affecting at-risk women and infants in the District of Columbia. All interested parties are invited to submit the following items:

- A. A copy of resume or CV
- B. Area of Specialty
- C. Reference(s)
- D. Statement as to why candidate is qualified to participate on this committee.

Please submit all requested information via email by **February 14, 2008** to Karen Smith at [karen2.smith@dc.gov](mailto:karen2.smith@dc.gov). Please note that the submission date has changed.

**DEPARTMENT OF HUMAN SERVICES  
INCOME MAINTENANCE ADMINISTRATION**

**NOTICE OF FUNDING AVAILABILITY**

**FY 2008 Mini-Subgrants to Small Non-Profit Community-Based Organizations**

The Department of Human Services (DHS), Income Maintenance Administration (IMA) is the lead agency in the District of Columbia for implementation of the Temporary Assistance for Needy Families (TANF) program. To facilitate achievement of TANF purposes, the DHS/IMA intends to award grant funds to small community-based and faith-based organizations that directly assist TANF customers and other low-income families and children in the District of Columbia.

DHS/IMA intends to make multiple grant awards of up to \$20,000 each to fund one or more services or activities offered by the eligible organizations for a 90-day period. Eligible organizations include small community-based, faith-based, non-profit organizations located in the District of Columbia with an annual budget not more than \$150,000. The service and activity to be funded through the mini-grant should have an immediate and direct impact on TANF customers or other low-income families with children with household incomes of less than or equal to 200 percent of the federal poverty line.

Faith-based organizations, such as churches, synagogues, mosques, or religiously based social service affiliates of such organizations are encouraged to apply.

The Request for Application (RFA) will be released on February 4, 2008. The RFA may be obtained from DHS/IMA located at 645 H Street, NE, Washington, D.C. 20002. In addition, the RFA will also be available on the Mayor's Office of Partnership and Grants Development website (<http://www.opgd.dc.gov>) under the link to the District Grants Clearinghouse. For additional information, please contact Ms. Betty Ervin, Department of Human Services, Office of Grants Management at 202-671-4397.

**The deadline for submission is Friday, March 14, 2008 at 4:00 pm**

Applicants are encouraged to attend the Pre-Application conference scheduled for Monday, February 25, 2008 from 1:00 p.m. – 3:00 p.m. at the Income Maintenance Administration, 645 H Street, NE; 5<sup>th</sup> Floor Conference Room, Washington, D.C. 20002. Applicants interested in attending the Conference should RSVP to Marchelle White, DHS/IMA at (202) 698-3942 on or before, Wednesday, February 20, 2008.

**DISTRICT OF COLUMBIA OFFICE OF PLANNING****NOTICE OF AVAILABILITY OF THE KENNEDY STREET NW REVITALIZATION DRAFT PLAN FOR PUBLIC COMMENT AND CONVENING OF PUBLIC HEARING**

**ACTION:** Notice of Availability of the Kennedy Street NW Revitalization Draft Plan for Public Comment and Convening of Public Hearing.

**SUMMARY:** In early 2007, the Office of Planning (DCOP), in conjunction with the Office of the Deputy Mayor for Planning and Economic Development (ODMPED) and other District agencies were charged with creating a revitalization plan for Kennedy Street NW. The Plan is a component of OP's broader planning efforts for the Brightwood area within Ward 4, and will address the need for economic revitalization, retail development, and public realm improvements. The planning area context includes all properties fronting along Kennedy Street from Georgia Avenue to the west and North Capitol Street NE to the east. DCOP included extensive public outreach in the development of the plan, which provides guidance on development concepts and design guidelines for selected focus areas along the corridor. The plan also identifies policy related recommendations that address public safety, encouraging mobility and connectivity, improving the overall look of Kennedy as well as opportunities to spark economic revitalization. Ultimately, the Draft Plan requires review, consideration and, as appropriate, adoption by the District of Columbia City Council. If adopted, the plan would require action by a number of DC agencies, as well as the non-governmental and private sectors.

The DCOP has published for public review and comment the Kennedy Street NW Revitalization Plan. The Plan is a preliminary analysis of various redevelopment opportunities along Kennedy Street (within Brightwood Park and South Manor Park neighborhoods). DCOP emphasizes that the findings, conclusions and development scenarios in the Draft Small Area Plan are preliminary. The DCOP is providing a 30-day public comment period on the Draft Kennedy Street NW Revitalization Draft Plan. Comments must be postmarked by the close of the comment period, which is March 13, 2008. Information on how to submit comments is set forth below.

The DCOP, working in collaboration with the cooperating agencies, will consider all public comments on the Draft Plan and make its final recommendations on the project to the Mayor of the District of Columbia. Subsequently, the Mayor will submit to the District of Columbia City Council for consideration a Revised Draft Plan. The Council will provide additional opportunities for public comment, and will review and fully evaluate the Revised Draft Plan. The Council will make its final decision regarding this project and any modifications and conditions it might impose on the plan. The mayor, through the cooperating agencies will implement the plan.

**FOR FURTHER INFORMATION CONTACT:** Malaika Abernathy, Neighborhood Planning Coordinator-Ward 4, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002; by telephone at (202) 442-7617; fax at (202) 442-7638; or email at [malaika.abernathy@dc.gov](mailto:malaika.abernathy@dc.gov)

**SUPPLEMENTARY INFORMATION:****Public Availability**

The DC Office of Planning has distributed the Draft Plan to several public entities, including the Advisory Neighborhood Commission 4C and 4D and asked that the entire Draft Plan be made available for the public to review. The Draft Plan is also available for public review at:

DC Office of Planning  
801 North Capitol Street NE  
Washington, DC 20002

Advisory Neighborhood Commission 4C  
MPD's Northern Regional Operation Command Center (ROC)  
801 Shepherd Street, NW  
Washington, DC, 20011

Advisory Neighborhood Commssion 4D  
Fouth District Police Station  
6001 Georgia Avenue NW  
Washington, DC 20011

Emory Recreation Center  
5701 Georgia Avenue, NW  
Washington, DC 20011

Hattie Holmes Senior Wellness Center  
324 Kennedy Street NW  
Washington, DC 20011

The draft plan is also available online at the DC Office Planning Web site: [www.planning.dc.gov](http://www.planning.dc.gov)

**Public Comment**

Written comments on the Draft Plan must be submitted by March 13, 2008. Comments must include the name, address and any organization for which the comments represent. Please send all comments to: Malaika Abernathy, Neighborhood Planning Coordinator-Ward 4, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002.

**Mayoral Hearing**

In addition to receiving written comments on the Draft Plan, DCOP will host a Mayoral Hearing on March 13, 2008 at the Hattie Holmes Senior Wellness Center, located at 324 Kennedy Street NW, Washington DC 20011 from 7:00 to 9:00 p.m.

At the hearing, DCOP will provide boards with visual representation pertaining to the recommendations set forth within the Draft Final Plan and respond to any questions relative to the graphic displays. Following this, members of the public will have an opportunity to offer comments.

**Submitted by:**

Malaika Abernathy, Neighborhood Planning Coordinator-Ward 4, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002; by telephone at (202) 442-7617; fax at (202) 442-7638; or email at [malaika.abernathy@dc.gov](mailto:malaika.abernathy@dc.gov)



## DISTRICT OF COLUMBIA OFFICE OF PLANNING

**NOTICE OF AVAILABILITY OF THE WASHINGTON HIGHLANDS  
NEIGHBORHOOD INVESTMENT FUND (NIF) DRAFT PLAN FOR PUBLIC  
COMMENT**

**ACTION:** Notice of Availability of the Washington Highlands Neighborhood Investment Fund (NIF) Draft Plan for Public Comment.

**SUMMARY:** The Neighborhood Investment Fund (NIF) is an annual non-lapsing, revolving fund to finance economic development and neighborhood revitalization in 12 target neighborhoods. The NIF is funded through an annual appropriation of 17% of a personal property tax, not to exceed \$10 million.

One of the requirements of the enabling legislation, the Neighborhood Investment Act of 2004, is for the Mayor to develop NIF Investment Plans for each of the target area using input from community stakeholders including the Advisory Neighborhood Commissioners, residents, business owners, faith community, not for profit organizations, among other groups. The purpose of the Investment Plan is to set community priorities for how the NIF funds should be utilized in the target area over a five year period. **The Investment Plan, which is the subject of this report, fulfills the legislative requirement for the Washington Highlands target area.**

The District of Columbia Office of Planning in partnership with the NIF Program's implementing agency, the Office of the Deputy Mayor for Planning and Economic Development, worked with community stakeholders to develop an investment plan for the Washington Highlands target area, which is bounded by starting at the corner of Southern Avenue and South Capitol Street, S.E., north along South Capitol Street, north along Livingston Road, S.E., northeast along Valley Avenue, S.E., southeast along Wheeler Road, S.E., and southwest along Southern Avenue, S.E.

The Office of Planning is publishing the draft Washington Highlands Target Area Investment Plan for a 30 day public comment period. Comments must be postmarked by the close of the comment period, which is March 7<sup>th</sup>. Information on where to review a copy of the plan and how to submit comments is set forth below. Once the 30-day comment period has elapsed, the Final Draft Plan will be submitted to the Council for its approval.

**FOR FURTHER INFORMATION CONTACT:** Aubrey D. Thagard, Neighborhood Planning Coordinator-Ward 8, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002; by telephone at (202) 442-7618; fax at (202) 442-7638; or email at [aubrey.thagard@dc.gov](mailto:aubrey.thagard@dc.gov).

**SUPPLEMENTARY INFORMATION:****Public Availability**

The DC Office of Planning has distributed the Draft Plan to several public entities and asked that the entire Draft Plan be made available for the public to review. The Draft Plan is available for public reviews at:

Washington Highlands Public Library  
115 Atlantic St SW  
Washington, DC 20001

Ferebee-Hope Education Center  
3999 8<sup>th</sup> Street, SE  
Washington, DC 20032

DC Office of Planning  
801 North Capitol Street NE  
Washington, DC 20002

Paramount Baptist Church  
3924 4<sup>th</sup> Street, SE  
Washington, DC 20032

The draft plan is also available online at the DC Office Planning Web site:  
[www.planning.dc.gov](http://www.planning.dc.gov)

**Public Comment**

**Written comments on the Draft Plan must be submitted by March 7, 2008.**

Comments must include the name, address and any organization for which the comments represent. Please send all comments to:

Aubrey D. Thagard, Neighborhood Planning Coordinator-Ward 8, DC Office of Planning  
801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002  
Phone: (202) 442-7618  
Facsimile: (202) 442-7638  
Email: [aubrey.thagard@dc.gov](mailto:aubrey.thagard@dc.gov).

**Submitted by:** Aubrey D. Thagard, Neighborhood Planning Coordinator-Ward 8, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002; by telephone at (202) 442-7618; fax at (202) 442-7638; or email at [aubrey.thagard@dc.gov](mailto:aubrey.thagard@dc.gov).

**DISTRICT OF COLUMBIA OFFICE OF PLANNING****NOTICE OF AVAILABILITY OF THE COLUMBIA HEIGHTS NEIGHBORHOOD INVESTMENT FUND (NIF) DRAFT PLAN FOR PUBLIC COMMENT**

**ACTION:** Notice of Availability of the Columbia Heights Neighborhood Investment Fund (NIF) Draft Plan for Public Comment.

**SUMMARY:** The Neighborhood Investment Fund (NIF) is an annual non-lapsing, revolving fund to finance economic development and neighborhood revitalization in 12 target neighborhoods. The NIF is funded through an annual appropriation of 17% of a personal property tax, not to exceed \$10 million.

One of the requirements of the enabling legislation, the Neighborhood Investment Act of 2004, is for the Mayor to develop NIF Investment Plans for each of the target area using input from community stakeholders including the Advisory Neighborhood Commissioners, residents, business owners, faith community, not for profit organizations, among other groups. The purpose of the Investment Plan is to set community priorities for how the NIF funds should be utilized in the target area over a five year period.

The District of Columbia Office of Planning in partnership with the NIF Program's implementing agency, the Office of the Deputy Mayor for Planning and Economic Development, worked with community stakeholders to develop an investment plan for Columbia Heights target area, which is bounded by Spring Rd / Rock Creek Church Rd to the north, and Florida Ave to the south. The area is bounded by Warder St (from Rock Creek Church Rd to Gresham Pl) / Georgia Ave (Gresham Pl to Euclid St) / Sherman Ave (Euclid St to Florida Ave) to the east and Mt Pleasant St / Columbia Rd / Champlain St to the west.

The Office of Planning is publishing the draft Columbia Heights Target Area Investment Plan for a 30 day public comment period. Comments must be postmarked by the close of the comment period, which is March 7<sup>th</sup>. Information on where to review and copy of the plan and how to submit comments is set forth below.

**FOR FURTHER INFORMATION CONTACT:** Tarek Bolden, Neighborhood Planning Coordinator-Ward 1, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002; by telephone at (202) 442-7619; fax at (202) 442-7638; or email at [Tarek.Bolden@dc.gov](mailto:Tarek.Bolden@dc.gov).

**SUPPLEMENTARY INFORMATION:****Public Availability**

The DC Office of Planning has distributed the Draft Plan to several public entities and asked that the entire Draft Plan be made available for the public to review. The Draft Plan is available for public reviews at:

Mt. Pleasant Neighborhood Library  
3160 16th Street, NW  
Washington, DC 20010

Parkview Recreation Center  
693 Otis Place, NW  
Washington, DC 20010

DC Office of Planning  
801 North Capitol Street NE  
Washington, DC 20002

Banneker Community Center  
2500 Georgia Ave., NW  
Washington, DC 20001

All Souls Church  
1500 Harvard Street, NW  
Washington, DC 20009

The draft plan is also available online at the DC Office Planning Web site: [www.planning.dc.gov](http://www.planning.dc.gov)

#### **Public Comment**

Written comments on the Draft Plan must be submitted by March 7, 2008. Comments must include the name, address and any organization for which the comments represent. Please send all comments to:

Tarek Bolden, Neighborhood Planning Coordinator-Ward 1,  
DC Office of Planning  
801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002  
Phone: (202) 442-7619  
Facsimile: (202) 442-7638  
Email: [Tarek.Bolden@dc.gov](mailto:Tarek.Bolden@dc.gov).

**Submitted by:** Tarek Bolden, Neighborhood Planning Coordinator-Ward 1, DC Office of Planning, by mail at 801 North Capitol Street, N.E., Suite 4000, Washington, DC 20002; by telephone at (202) 442-7619; fax at (202) 442-7638; or email at [Tarek.Bolden@dc.gov](mailto:Tarek.Bolden@dc.gov).

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION  
CERTIFICATION AND NOTICE OF RENT ADJUSTMENT OF GENERAL  
APPLICABILITY**

**EFFECTIVE MAY 1, 2008**

1. Pursuant to Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission shall determine an adjustment of general applicability in the rent of the rental units established by Section 206(a), which shall be equal to the change during the previous calendar year in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA)<sup>1</sup> Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items.
2. Pursuant to Section 206(b) of the Rental Housing Act of 1985, the Commission determined that the Washington-Baltimore (SMSA) CPI-W for All Items increased by 3.4% during the previous calendar year.
3. Accordingly, the Rental Housing Commission determined that the change during calendar year 2007, in the Washington-Baltimore SMSA CPI-W for All Items was 3.4%.
4. Pursuant to the requirements of Section 202(a)(3) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission hereby certifies and gives notice that the rent adjustment of general applicability to become effective on May 1, 2008, shall not exceed 3.4% of the rent in effect on April 30, 2008.

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1. The Rental Housing Commission and the Rent Administrator are mandated by the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE § 42-3501.01 *et seq.*, to annually calculate and publish in the D.C. Register the percentage change in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for All Items. D.C. OFFICIAL CODE §§ 42-3502.02(a)(3), 3502.04(k), 3502.06(b) (2001).

The Act does not comply with two changes in the publication by the Department of Labor (DOL), Bureau of Labor Statistics (BLS), which publishes the CPI-W statistics and determines what areas will be in the Standard Metropolitan Statistical Area. First, DOL/BLS enlarged the geographical areas included with Washington, D.C., in the local Standard Metropolitan Statistical Area and second, the name of the DOL/BLS statistical document was changed. Originally, the Standard Metropolitan Statistical Area included only three jurisdictions, which were Washington, D.C., Maryland, and Virginia. The statistical document issued by DOL/BLS, and used by both the Rent Administrator and the Rental Housing Commission was named "Consumer Price Index, Urban Wage Earners and Clerical Workers – (CPI-W), Washington, DC-MD-VA, All Items." That publication was discontinued, and now the DOL/BLS publication is the "Consumer Price Index, Urban Wage Earners and Clerical Workers-(CPI-W), Washington-Baltimore, DC-MD-VA-WV, All Items." The difference is the inclusion of the state of West Virginia and the city of Baltimore, Maryland into the Standard Metropolitan Statistical Area with Washington, D.C.

**RENTAL HOUSING COMMISSION 2008 RESOLUTION**

for

**THE CHANGE IN THE CONSUMER PRICE INDEX, URBAN WAGE EARNERS  
AND CLERICAL WORKERS – (CPI-W), WASHINGTON-BALTIMORE,  
DC-MD-VA-WV, ALL ITEMS**

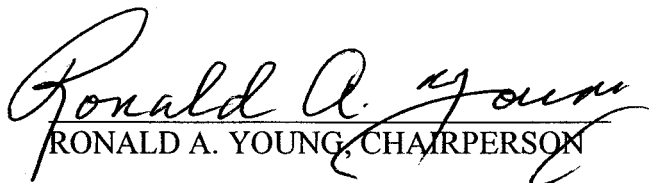
It is hereby resolved by the Rental Housing Commission this 31<sup>st</sup> day of January,  
2008

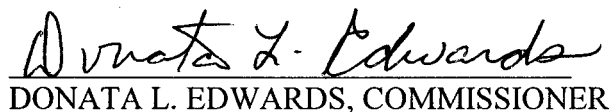
1. Whereas, effective January 1998, the United States Department of Labor eliminated the “Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items,” which was published bimonthly in odd numbered months ending with November each year, and initiated the “Consumer Price Index, Urban Wage Earners and Clerical Workers – (CPI-W), Washington-Baltimore, DC-MD-VA-WV, All Items,” which includes the city of Washington, D.C., and the states of Maryland, Virginia, and West Virginia, hereinafter referred to as Washington-Baltimore, that is published bimonthly in odd numbered months ending in November each year;
2. Whereas, pursuant to Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission is mandated to determine the change, during the twelve months of calendar year 2006 in the Washington-Baltimore Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items;
3. Whereas, pursuant to the requirements of Section 206(b) of the Rental Housing Act of 1985, D.C. Law 6-10, the Rental Housing Commission used the reported CPI-W for calendar year 2007 in the Washington-Baltimore Standard Metropolitan Statistical Area (SMSA) Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items;
4. Be it resolved that the Commission determined the 2007 change in the CPI-W for the Washington-Baltimore SMSA was 3.4%.
5. Pursuant to the requirements of Section 202(a)(3) of the Rental Housing Act of 1985, D.C. Law 6-10:<sup>1</sup>
  - (a) The Rental Housing Commission hereby certifies that the rent adjustment of general applicability, to become effective on May 1, 2008 shall not exceed 3.4% of the rents in effect on April 30, 2008; and

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<sup>1</sup> As amended by D.C. Law 16-145, the “Rent Control Reform Amendment Act of 2006.” See 53 D.C. Register 6688 (Aug. 18, 2006)

- (b) The Rental Housing Commission adopts the Certification and Notice of Rent Adjustment of General Applicability, effective May 1, 2008, in the form annexed hereto and directs its transmittal to the District of Columbia Office of Documents for publication in the District of Columbia Register.

  
RONALD A. YOUNG, CHAIRPERSON

  
DONATA L. EDWARDS, COMMISSIONER

**DISTRICT OF COLUMBIA  
STATE HISTORIC PRESERVATION OFFICER**

**NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS**

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following properties as a historic district in the D.C. Inventory of Historic Sites. The Board designated the property at a duly noticed public hearing on January 24, 2008. The designation takes effect immediately, as the property is already listed on the National Register of Historic Places. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

**Designation Case No. 08-02  
Armed Forces Retirement Home  
3700 North Capitol Street, NW, Parcel 121/28**

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following properties as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

**Designation Case No. 02-03  
Old Engine House 10  
1341 Maryland Avenue, NE (Square 1028, Lot 830)**

Listing in the D.C. Inventory of Historic Sites and the National Register of Historic Places provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

If you have any questions, you may contact Timothy Dennee, Landmarks Coordinator for the District of Columbia Historic Preservation Office, at 202-442-8847.



**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
OFFICE OF PUBLIC CHARTER SCHOOL FINANCING AND SUPPORT**

**ANNOUNCES A CHANGE IN MEETING TIME  
FOR THE DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL CREDIT  
ENHANCEMENT FUND COMMITTEE**

The Office of the State Superintendent of Education hereby announces that the February meeting time for the District of Columbia Public Charter School Credit Enhancement Fund Committee, originally scheduled for February 21, 2008 at 12:30 pm, has been changed to 3:30 pm.

The meeting will take place at 441 4<sup>th</sup> Street, NW, Suite 350 North, Conference View Room, Washington, DC 20001 from 3:30 pm to 4:30 pm. For additional information, please contact:

Vanessa Carlo-Miranda  
Program Manager  
Office of the State Superintendent of Education  
Government for the District of Columbia  
441 4th Street, N.W.; Suite 350N  
Washington, D.C. 20001  
Tele: 202-442-4022  
Fax: 202-727-2019  
[vanessa.miranda@dc.gov](mailto:vanessa.miranda@dc.gov)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Appeal No. 17504-A of JMM Corporation**, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decisions of Administrative Law Judges, Department of Consumer and Regulatory Affairs ("DCRA"), sustaining two notices of civil infraction for operating in derogation of Certificate of Occupancy B176169 and revoking the aforementioned Certificate of Occupancy as well as a Mechanical Amusement License. The subject property is located in the DD/C-2-C District at premise 919 5<sup>th</sup> Street, N.W. (Square 516, Lot 825).

**HEARING DATES:** July 25, 2006, December 5, 2006, February 20, 2007

**DECISION DATE:** March 6, 2007

**DATE OF DECISION**

**ON EMERGENCY**

**MOTION TO STAY:** October 23, 2007

**ORDER DENYING EMERGENCY MOTION TO STAY ORDER**

On October 9, 2007, Appellant JMM Corporation ("JMM" or "movant") filed an Emergency Motion for a Stay ("Motion") of the Board of Zoning Adjustment ("Board" or "BZA") Order issued on October 1, 2007 in BZA Appeal No. 17504 ("Order"). JMM seeks to stay the Order while its petition to review the decision is pending before the District of Columbia Court of Appeals.

The Order upheld the revocations of JMM's Certificate of Occupancy ("C of O") No. B176169 and Mechanical Amusement License No. 31005263. The revocations, and the Board's Order sustaining those actions, were principally based upon a finding that JMM's retail establishment – Fun Fair Video – was a sexually-oriented business establishment ("SOBE"), as that term is defined in the Zoning Regulations, at 11 DCMR § 199.1. Following the issuance of the Order, the Office of the Attorney General sought and was granted a Temporary Restraining Order by the D.C. Superior Court temporarily closing Fun Fair Video.

**BZA APPEAL NO. 17504-A****PAGE NO. 2**

In order for JMM to prevail on its motion it must make four showings: (1) likelihood of success on the merits of its petition for review, (2) irreparable injury resulting from denial of the stay, (3) no harm to opposing parties if a stay is granted, and (4) the public interest favors the granting of the stay. *Barry v. Washington Post Co.*, 529 A.2d 319, 320-321 (D.C. 1978).

The Board notes at the outset that, the Court of Appeals has already denied a virtually identical motion on October 12, 2007. Appellant provides no reason why this Board should find contrary to that decision. In fact, Appellant argues as its “fundamental grounds” for a stay that “[t]he Constitution does not permit the unbridled discretion in administrative agencies to stop the operations of adult entertainment businesses. That is the proper function of the courts.” Appellant’s Emergency Motion to Stay BZA’s Final Order at 4. Accordingly, both the D.C. Court of Appeals in denying the stay and the D.C. Superior Court in ordering temporary closure of the business, have exercised that function. This Board defers to the Court of Appeal’s ruling that Appellant has not made the required showing and concurs with the Court’s conclusion based on the evidence in the record.

This Board does not have jurisdiction over the Constitutional claims upon which Appellant bases its argument for likelihood of success on the merits. Those claims are within the expertise of the Court of Appeals. Accordingly, this Board defers to the Court’s judgment in denial of the stay on that ground. Appellant’s allegation of permanent financial harm from closure of its business is outweighed by the harm to the surrounding community and the party in this case, ANC 6A, that would ensue from continued operations of an unlawful business found to be compromising public decency. For the same reasons, granting the stay would be contrary to the public interest.

For the reasons stated above, the Board concludes that JMM has not met its burden of demonstrating that it is entitled to a stay of this Board’s Order in Appeal No. 17504. Accordingly, JMM’s Emergency Motion to Stay the BZA’s Final Order, filed on October 9, 2007, is **ORDERED DENIED**.

**VOTE:**        **3-0-2** (Ruthanne G. Miller, Curtis L. Etherly, Jr., and Marc D. Loud to deny; no fourth member and no Zoning Commission member participating or voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member approved the issuance of this order.

**BZA APPEAL NO. 17504-A**  
**PAGE NO. 3**

**FINAL DATE OF ORDER:** JAN 29 2008

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 17551-A of Mustafa Guldu**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 405, a variance from the side yard requirements under § 404, and a variance from the prohibition on enlarging a non conforming structure under subsection 2001.3 that will increase an existing nonconformity and which will not comply with area requirements<sup>1</sup>, to allow the construction of a two-story addition to an existing flat (two-family dwelling) in an R-2 District at premise 4323 River Road, N.W. (Square 1653, Lot 16).

**HEARING DATES:** December 19, 2006 and January 23, 2007

**DECISION DATE:** January 23, 2007

**CORRECTED DECISION AND ORDER\***

\*Note: Pursuant to 11 DCMR § 3125.6, this order corrects the attestation page of Order No. 17551, which was inadvertently mailed without notice to the Applicant. In all other respects, the order remains the same.

This application was filed by Mehmet Ergene, an Architect, on behalf of Mustafa Guldu ("Applicant"), the owner of the property that is the subject of this application. The property, located at 4323 River Road, N.W., is improved with a nonconforming flat in an R-2 District. The Applicant self-certified his need for variance relief from the Board of Zoning Adjustment. He is seeking variances from the lot occupancy requirements under § 405, the side yard requirements under § 404, and the prohibition on enlarging a non conforming structure under § 2001.3, to construct a two-story addition to the existing flat.

For the reasons discussed below, the Board denied the application by a vote of 5-0-0.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated August 28, 2006, the District of Columbia Office of Zoning ("OZ") notified the Councilmember for Ward 3,

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<sup>1</sup> The application was originally advertised as a request to expand a structure devoted to a nonconforming use pursuant to 11 DCMR § 2002.5. For reasons that are explained in the conclusions of law, the Board determined that it was the structure that was nonconforming, not the use.

**BZA APPLICATION NO. 17551-A****PAGE NO. 2**

Advisory Neighborhood Commission ("ANC") 3E, as well as the ANC member for Single Member District 3E03, the District of Columbia Department of Transportation ("DDOT") and the District of Columbia Office of Planning ("OP"), of the filing of the application. Pursuant to 11 DCMR § 3113.13, the OZ published notice of the hearing on the application in the *District of Columbia Register* and on October 5, 2006 mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the December 19, 2006 hearing date. On December 15, 2006, the Applicant filed an affidavit of posting indicating that he placed a zoning poster on the subject property in plain view of the public on December 4, 2006. In fact, he did not post the notice on the property until December 8, 2006, after his agent, Mr. Ergene, was notified by the staff that the Office of Zoning had received information indicating that the property had not been posted. As a result of the late posting, the Board postponed the hearing until January 23, 2007.

Requests for Party Status. The Board granted party status to Elaine Chan, the daughter of Florence Chan, the owner of 4321 River Road, N.W. on lot 15. That property is the other half of the semi-detached building that is owned by the Applicant, and it shares the party wall to the east of the subject property. The Board also granted party status to Michael Soghomonian, who was representing his father, John Soghomonian, the owner of lot 14, which is the property that is immediately adjacent to the Applicant's property on the west side and the rear. ANC 3E was automatically a party to the proceeding.

Applicants' Case. The Applicant and his architect testified in support of his variance application. Although the Applicant's intention with respect to this building was not entirely made clear, it appears that he will be occupying one unit and renting out the other. Although the addition would contain a bedroom on each floor, the number of bedrooms would not increase since one of the existing bedrooms on each floor would be converted into a den. In addition, each unit would have a passageway leading to a new bathroom. At present, the only means of accessing the existing bathroom is through one of the bedrooms. The reconfiguration permitted by the addition would allow persons using each bedroom to directly access a bathroom. Also, the expansion and reconfiguration of the structure would allow the Applicant to increase the rent charged for the other unit so as to offset increases in his property tax.

Government Reports. On December 12, 2006, OP filed its report recommending that the application for variance relief be denied because it did not meet two of the three elements for granting variance relief.

ANC Report. In letters dated November 11 and December 15, 2006, ANC 3E informed the Board that at a properly noticed meeting on December 14, 2006, the Commissioners

**BZA APPLICATION NO. 17551-A****PAGE NO. 3**

voted, 4-0, to support the application. Subsequently, in a letter dated January 12, 2007, the ANC Chairman stated that new information had come to the Commissioners' attention concerning the Applicant's failure to contact a neighbor and his failure to post notice, and, if this information had been available at the time of the initial vote, it may have resulted in the ANC recommending that the application be denied. The January 12<sup>th</sup> letter does not reflect official action by the ANC since no vote was taken by the ANC at a duly noticed meeting.

Parties and Persons in Support. There were no parties or persons in support of the application.

Parties and Persons in Opposition. Elaine Chan, representing her mother, the owner of the other half of the duplex, testified as a party in opposition. She testified that there was frequent flooding in the basement of her mother's property as a result of water flowing off of the Applicant's property on to her mother's property at 4321 River Road, N.W., and that condition would be exacerbated by the proposed addition. According to Ms. Chan, the increased lot coverage would result in increasing the runoff and reducing the permeable surface area and vegetation available for the absorption of water from rain and snow. Ms. Chan was also concerned that there could potentially be three bedrooms in each unit, which could result in an increase in the number of residents in the subject property. She feared that additional residents would lead to more noise, increased demands on parking, and greater competition for open space for recreation, leisure and solid waste disposal containers. Ms. Chan felt that these factors would have an adverse impact on the rental value of her mother's property.

Michael Soghomonian, whose father owns the property to the rear and west of the subject property, was concerned that the addition would be too close to his father's property, be too large, and adversely affect light and air. He also opposed the proposed construction because of the possibility that the addition on the property could later be used as two three bedroom housing units.

Gustavo Vasquez, of 4907 44<sup>th</sup> Street, N.W., filed a statement in opposition to the application, claiming that the subject property would be a four unit apartment building, too large for its lot, and out of character with the neighborhood.

**FINDINGS OF FACT**

1. The subject property is located at 4323 River Road, N.W., Square 1653, Lot 16, in an R-2 zone district.

**BZA APPLICATION NO. 17551-A****PAGE NO. 4**

2. The purpose of the R-2 district is to protect one-family, semi-detached dwellings from the invasion by denser types of residential development, such as flats and row dwellings, 11 DCMR § 300.1.
3. A flat is a two-family dwelling, 11 DCMR 199.1 definition of "flat"), which is first permitted in an R-4 zone district, 11 DCMR § 330.5 (b).
4. The property is an irregularly shaped lot that is a trapezium, which is nearly triangular shaped.
5. The subject property is bounded on the east by lot 15, on which is located 4321 River Road, N.W. That lot is improved by a semi-detached flat dwelling that shares a common divisional wall with the subject property.
6. To the west of the subject property is a ten-foot wide green space that is an extension of lot 14. Lot 14 also abuts the rear of the subject property to the north and has a residence on it that fronts on Ellicott Street.
7. The subject property is improved with a flat with one unit on the first floor and another unit on the second floor. Each unit has two bedrooms with a bathroom located between the two bedrooms.
8. The bathrooms do not open on to a common area, but may only be accessed through one of the bedrooms.
9. The subject structure is also nonconforming in two respects. First, it is a flat, which is not among the matter-of-right uses permitted in the R-2 district pursuant to 11 DCMR § 300.3, and second, it occupies 41.9% of its lot, which exceeds the 40% maximum lot occupancy allowed for "all other structures" in an R-2 zone by 11 DCMR § 403.2.
10. The proposed addition would be attached to west side of the existing semi-detached dwelling. The addition would consist of a bedroom, a bathroom, and a walk-in closet being added to each unit. One of the existing bedrooms in each of the units would become a den.
11. The proposed addition would be nearly triangular in shape with its new building walls parallel to the property lines.
12. Applicant proposes to increase the already nonconforming lot occupancy to 55.9%.



**BZA APPLICATION NO. 17551-A****PAGE NO. 5**

13. The side yard to the west of the addition will be 5 feet wide, rather than the 8 feet that is the minimum width required for a side yard in an R-2 district. (*See* 11 DCMR § 405.9)
14. Without the addition, the Applicant could still provide common access to each bathroom by constructing a door to the bathroom from the living room/dining room area ( *See* Exhibit 9)
15. The Applicant provided no evidence that the property is not currently economically viable other than an undocumented assertion that the property is smaller than others in the neighborhood and that property taxes were increasing. (Transcript, January 23, 2007, 338-339)
16. In the past, the property has been a viable rental property for the Applicant.
17. The Applicant testified that, if the addition is not approved, he could make less extensive renovations to the building. (Transcript, January 23, 2007, 389)
18. The proposed addition would eliminate green space on the west side of the property, come within eight feet of its rear neighbor's property line, and be 20 feet from that neighbor's home.

**CONCLUSIONS OF LAW**

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.* In this context, the Board must consider the effect of the variance relief on the "public good," including the surrounding properties, and the size and massing of a building which would result from the granting of such relief.

As noted, a flat is not permitted in an R-2 zone. If a flat were considered a nonconforming use, 11 DCMR 2100.5 disallows the expansion of the structure in which

## BZA APPLICATION NO. 17551-A

## PAGE NO. 6

it is located, "except if the enlargement is to be devoted to a conforming use." Although the application was advertised as a variance from this prohibition, the Board found that because residential uses are permitted in an R-2 zone, the fact the structure had two dwelling units, rather than the single unit permitted, did not make that use nonconforming.

Instead, the Board concluded that the application involved an expansion of a nonconforming structure. As such, the provisions of 11 DCMR § 2001.3 applied. That subsection allows additions to a nonconforming structure if the structure will comply with lot occupancy requirements, the addition will conform to use and structure requirements, and the addition does not increase an existing nonconformity or create a new one. As noted in the findings of facts, the proposed addition will increase the nonconforming lot occupancy and will not comply with the side yard requirements. Therefore, a variance from 11 DCMR § 2001.3 is also required.

Because all of the variances required in this case are area variances, the Applicant must make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: uniqueness of the property, that such uniqueness results in "practical difficulties" to the Applicant, and that the granting of the variance will not be detrimental to the public good or impair the intent and integrity of the zone plan and regulations.

Since the subject property is irregularly shaped, the Applicant has met the first prong of the three part test for an area variance by establishing that the property has an "extraordinary or exceptional situation or condition." However, the Applicant has failed to show how that unusual shape has resulted in peculiar or exceptional practical difficulties for him in complying with the Zoning Regulations. Without any supporting documentation, the Applicant claimed that he needed the variances to make the property economically viable. He noted that the property was smaller than other properties in the neighborhood and the taxes were constantly increasing. In the past, the property has been a viable rental property for the Applicant. There is no reason to believe it will not continue to be so. The Applicant has admitted that even without the addition, he could make less extensive renovations. Since the Applicant has failed to submit any evidence that the property is not economically viable, the Board does not consider this to be a basis for a finding that there are practical difficulties.

The Applicant also testified that he wants to construct the addition to enable house guests to use the bathrooms without going through his bedroom. However, that objective can be

**BZA APPLICATION NO. 17551-A****PAGE NO. 7**

achieved without constructing an addition, by adding a door to the bathroom from the living room/dining room area. Accordingly, the strict application of the Zoning Regulations does not result in a peculiar or exceptional practical difficulty for the Applicant.

The Applicant also fails to meet the third prong of the variance test, which requires that the Applicant show that the requested variance will not result in substantial detriment to the public good and that it will not impair the intent and purpose of the zone plan as embodied in the zoning regulations. The addition would increase the already nonconforming lot occupancy from 41.9 % to 55.9 %, which would be a significantly higher lot occupancy than the surrounding properties. It will likely have a negative effect on the privacy of the neighbor to the rear and its increased lot occupancy will be out of character with the other properties in the neighborhood. Consequently, variance relief cannot be granted without substantial detriment to the public good. The Board also concludes that the Applicant's proposed addition will impair the integrity of the R-2 zone plan by substantially impinging on the green space to the west of the existing building and increasing the lot occupancy significantly beyond the 40% limit to 55.9%. Such construction would be contrary to the purpose of the R-2 district, which is to protect one-family, semi-detached dwellings from the invasion by denser types of residential development and to preserve a significant amount of green space around them by limiting the lot occupancy to 40%.

**The ANC and OP Recommendations**

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). The ANC stated that it did not oppose the application. Subsequently, in a letter that was not the result of action taken during an official meeting, the ANC Commissioners expressed reservations about the application. However, the Board cannot rely on assertions that were not made in accordance with the requirements of section 13(d) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d) (2001). Furthermore, because the ANC report did not express any issues or concerns, there is nothing for which the Board can give great weight to.

The Board agrees with OP's recommendation that variance relief should be denied because the Applicant failed to meet the second and third prongs of the variance test for any of the variances sought. Since the Board reached this conclusion based upon the more lenient practical difficulty standard than the more severe undue hardship standard deemed applicable by OP, the difference in views is of no consequence.

**BZA APPLICATION NO. 17551-A****PAGE NO. 8**

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to his application for variance relief. It is therefore **ORDERED** that the application is **DENIED**.

**VOTE: 5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., Gregory N. Jeffries and John A. Mann II to deny)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each voting Board member (other than former members Griffis and Mann) has approved the issuance of this Order denying this application.

**FINAL DATE OF ORDER:** **JAN 29 2008**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****NOTICE OF SPECIAL PUBLIC MEETING**

The Zoning Commission of the District of Columbia, in accordance with § 3005 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has scheduled a Special Meeting for Thursday, February 21, 2008, at 6:00 P.M., to consider various items.

For additional information, please contact Sharon Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 02-26A**

**Z.C. CASE NO. 02-26A**

**Application by George Washington University for Further Processing  
of an Approved Campus Plan Under § 210 to Modify Conditions  
of Approval of the Lerner Health & Wellness Center  
at 2301 G Street, N.W., (Square 55, Lot 847)  
November 15, 2007**

Pursuant to public notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 15, 2007, to consider an application from the George Washington University ("University" or "Applicant") pursuant to §§ 210 and 3104.4 of the Zoning Regulations for "further processing" special exception relief, under an existing campus plan, to modify the conditions of approval governing use of the Lerner Health and Wellness Center (the "Center"). The conditions were originally adopted by the Board of Zoning Adjustment ("BZA") and were subsequently modified by the Commission, subject to a three-year term of approval.

**Procedural Background**

**Public Notice.** The Office of Zoning published a notice of public hearing in the *D.C. Register* on October 5, 2007 (54 DCR 9531). The Office of Zoning also mailed a notice of public hearing to the owners of all property within 200 feet of the subject property; the Office of Planning; the District Department of Transportation; Advisory Neighborhood Commission ("ANC") 2A, the ANC for the area within which the property is located; the Ward 2 Councilmember; and the Applicant.

**Preliminary Matters.** In addition to the Applicant, ANC 2A was automatically a party in this proceeding. At the hearing, the Commission denied a request for party status submitted by Dorothy Miller.

**Case History.** In Application No. 16276 (order issued March 31, 1998), the BZA approved the construction and use of the Center by the students, faculty, and staff of the University's Foggy Bottom Campus. In Z.C. Order No. 02-26 (June 14, 2004), the Commission conditionally expanded user privileges to the Center to students, faculty, and staff of the University's Mount Vernon Campus, members of the University's Board of Trustees, and to students of the School Without Walls in organized activities under the supervision of school faculty. The Commission approved the expanded categories of users for a period of three years and stated that, absent a new special exception approval at the end of that period, the use of the Center would revert to the

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students, faculty, and staff of the University's Foggy Bottom Campus (as approved in BZA Order No. 16276).

Applicant's Case. In this application, the University seeks permission to continue the expanded categories of users approved in 2004 in Z.C. Order No. 02-26 as well as the approval of two new classes of users. Specifically, the University requests approval to:

1. Allow the continued use of the Center by (a) the students, faculty, and staff of the University's Mount Vernon Campus; (b) members of the University's Board of Trustees; and (c) the students of the School Without Walls ("SWW") in organized activities under the supervision of SWW faculty;
2. Permit use of the Center by persons residing in certain facilities or belonging to certain organizations with facilities located in close proximity to the Center, specifically: (a) St. Mary's Court, located at 725 24<sup>th</sup> Street, N.W.; (b) St. Mary's Episcopal Church, located at 728 23<sup>rd</sup> Street, N.W.; and (c) the Remington Condominium, located at 601 24<sup>th</sup> Street, N.W.; and
3. Permit use of the Center by a limited number of University alumni who reside in the Foggy Bottom/West End area as defined in the University's approved Foggy Bottom Campus Plan (2007).

The modifications described in paragraphs 2 and 3 above would add a total of 300 users to those currently permitted to use the Center described in paragraph 1. The University also seeks to make permanent the user classes that were authorized in Z.C. Order No. 02-26.<sup>1</sup>

The Applicant provided testimony from Alicia O'Neil, the Director of Real Estate Operations for the University, Charles K. Barber, Senior Counsel to the University, and a traffic expert, Nicole White of Symmetra Design. The witnesses described the University's mission to provide a high-quality education for students and to serve the community by providing academic, cultural, and recreational opportunities, noting that many University venues are open to the public even though their primary purpose is to contribute to the educational experience of the University students.

The witnesses testified that the Center has sufficient capacity to accommodate 300 additional users at all times when the Center is open, stating that, since opening in 2001, the Center has operated below its capacity of 1,973 users at any one time. According to the Applicant, the majority of the proposed new users will be located within a short walk to the Center, so that fewer than five percent of the new users will be expected to drive to the Center and that neither

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<sup>1</sup> The University withdrew a request for authority to extend user privileges at the Center to members of the Odd Fellows Lodge located at 701 24<sup>th</sup> Street, N.W.



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the continuation of the user classes approved in 2004 nor the addition of 300 new members from the requested categories will cause adverse impacts on traffic or parking in the area.

Government Reports. By a report dated November 8, 2007 and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application.

ANC Report. ANC 2A submitted a letter stating that at a meeting held October 17, 2007, with a quorum present, ANC 2A voted 5 to 0, "to support continued access [to the Center] for Mount Vernon students, School Without Walls students and the University's Board of Trustees and to allow access [to the Center] to St. Mary's Court and to St. Mary's Church." The ANC also voted 4 to 1, "to support allowing access [to the Center] for the Remington Condominiums and to Foggy Bottom/West End alumni of the University."

Persons in Support. Several persons from the Foggy Bottom/West End neighborhood testified in support of the application, including representatives from St. Mary's Court, the Remington Condominiums, and St. Mary's Church as well as a University students and alumni.

Persons in Opposition. Dorothy Miller, a neighborhood resident, submitted documents and testified at the public hearing. Ms. Miller supported the University's request to extend user privileges to St. Mary's Church and to St. Mary's Court and opposed the University's request to extend membership privileges to the Remington Condominiums and to University alumni who reside in the Foggy Bottom/West End area. She questioned whether extending user privileges to the Remington Condominiums and to University alumni who reside in the area constituted a sufficient connection to the University's mission in a residential district, were too intense for the western edge of the campus, or constituted unfair competition to private health clubs or illegal discrimination against non-University alumni who live in the Foggy Bottom/West End area.

Elizabeth Elliott submitted a statement on behalf of the Foggy Bottom Association in which the Association expressed its support for the University's request to extend use privileges to St. Mary's Court and to St. Mary's Church but opposed the University's request to extend use privileges to University alumni and to the Remington Condominiums.

Campus Plan Proceedings. By Z.C. Order No. 06-11/06-12, effective October 26, 2007, the Commission approved the University's 2007 Foggy Bottom Campus Plan for a 20-year period. The Lerner Health and Wellness Center, sited at its present location as a recreational facility, is a part of that Plan.

### **FINDINGS OF FACT**

1. The subject property is located at 2301 G Street, N.W., at the northwest corner of the intersection of 23<sup>rd</sup> and G Streets, N.W. (Square 55, Lot 847). The subject property is located within the University's campus plan boundaries and is zoned R-5-D.

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2. The subject property is improved with a four-story structure with four underground levels, three of which are used for parking. The building houses the Lerner Health and Wellness Center, which is used for physical fitness and recreational activities.
3. Construction and use of the Center was conditionally approved by the BZA order issued March 31, 1998 in Application No. 16276. The conditions of approval require that: (a) use of the facility is limited to the students, faculty, and staff of the Foggy Bottom campus and (b) operation of the facility must end at 10:00 p.m., Monday through Saturday and 8:00 p.m. on Sundays.
4. The Center opened in August 2001. The Center is able to accommodate additional users, given that its capacity is almost 2,000 users at any given time, and peak usage is approximately 2,600 users in an entire day.
5. As approved in Z.C. Order No. 02-26, the Center now opens at 6:00 a.m. and closes at 11:30 p.m. daily. Peak hours of use are Monday through Wednesday, 5:00 p.m. to 8:00 p.m.
6. The University runs a shuttle bus service between the Foggy Bottom and Mount Vernon campuses 24 hours per day. Shuttle buses run every 10 minutes between 7:00 a.m. and 7:00 p.m., and are scheduled no less frequently than every 20 minutes during the school year. A shuttle bus stop is located one block from the Center. The shuttle buses have carried as many as 68,000 users in a one-month period and over 500,000 rides for each of the past two years.
7. Most Mount Vernon Campus students also take courses at the Foggy Bottom Campus and are not likely to create additional adverse impact.
8. The Commission credits the testimony of the Applicant's traffic expert that current use of the Center is not generating adverse traffic impacts in the surrounding neighborhood, and that most current users arrive at the Center on foot or by public transportation. The Commission also credits the expert's testimony that neither the continuation of the 2004 user classes nor the addition of 300 new users of the Center from the Foggy Bottom/West End community will cause adverse impacts on traffic or parking in the area.
9. SWW is a public high school located at 2135 G Street, N.W., within the University's campus plan boundaries. Some SWW students and faculty are enrolled in University classes and are permitted to use certain University facilities, such as the library and the Center. The SWW building is currently under renovations, and courses are being held at an alternate location. During this time, students are bused to the campus for certain events. SWW anticipates reoccupying its G Street building in Fall 2009.

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10. The use of the Center by the students, faculty, and staff of the University's Foggy Bottom and Mount Vernon campuses, the students of SWW, and the University's Board of Trustees has not caused any objectionable conditions for neighboring properties.
11. The Center has a membership base of more than 29,000 University students, faculty, and staff who are eligible to use its facilities. The addition of 300 potential new users, all of whom are immediately adjacent neighbors or have a direct connection to the University, will be incidental to the principal university use of the Center.
14. The University will reserve 50 free passes allowing use of the Center by persons from St. Mary's Church, St. Mary's Court, and the Remington Condominiums, and will offer 250 paid memberships to University alumni who reside in the Foggy Bottom/West End Campus Plan area as defined in the approved 2007 Campus Plan. Alumni memberships will be valid for a renewable one-year period, and will be awarded generally on a first come, first serve basis.

### **CONCLUSIONS OF LAW**

The Applicant is seeking special exception approval, pursuant to §§ 210 and 3104 of the Zoning Regulations, for further processing of its approved campus plan to continue, as modified, the conditions of approval for the use of the Lerner Health and Wellness Center previously adopted by the Commission in Z.C. Order No. 02-26. The Commission is authorized to grant a special exception where, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in § 210.

In considering the University's application, the Commission notes that the Center is a university use that would not be permitted in the R-5-D zone but for its approval as a special exception consistent with the University's approved campus plan. Accordingly, any changes to the conditions of approval adopted by the BZA in initially approving the construction and use of the Center must maintain its purpose as a university use. The D.C. Court of Appeals, this Commission, and the BZA have all found that a university may offer the benefits of a university use to incidental users in the general public without diminishing that use's status as an accessory to a principal (university) use. Citizens Coalition et al. v. DC Board of Zoning Adjustment, 619 A.2d 440 (DC App. 1993), Z.C. Order No. 03-29, BZA Order No. 17249.

The Commission concludes that the categories of expanded membership that were approved in Z.C. Order No. 02-26 can continue to be permitted consistent with the university use of the Center. They are: (a) students, faculty, and staff of the University's Mount Vernon campus;

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(b) members of the University's Board of Trustees; and (c) students of the School Without Walls, provided that the high school students are engaged in organized activities at the Center under the supervision of school faculty.

The Commission further concludes that an additional 300 users from the Foggy Bottom/West End area, as proposed by the University, can be approved as incidental to the principal University use.

The Commission accorded the issues and concerns of ANC 2A the "great weight" to which they are entitled. In doing so, the Commission fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed modifications of use of the Center on the ANC's constituents. The Commission also accorded "great weight" to the recommendation of the Office of Planning, which concluded that approval of the application would be consistent with the requirements of § 210 of the Zoning Regulations.

The expanded membership approved in this Order will maintain the university use of the Center and will not alter its character as a university support facility. The application is consistent with the approved 2007 Foggy Bottom Campus Plan and does not affect the Mount Vernon Campus Plan.

Based upon the record before the Commission, and having given great weight to the issues and concerns of the affected ANC and to the recommendation of the Office of Planning, the Commission concludes that the Applicant has met its burden of proof, pursuant to 11 DCMR §§ 3104.1 and 210.1, that the continuation of the conditions of Z.C. Order No. 02-26, as modified in this Order, will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. A five-year term of approval is appropriate for the expanded categories of users approved in this Order.

### **DECISION**

In consideration of the findings and conclusions set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS** that this application be **GRANTED**, subject to the following **CONDITIONS**:

1. Use of the Center shall be limited to:
  - (a) the students, faculty, and staff of the University's Foggy Bottom Campus;
  - (b) the students, faculty, and staff of the University's Mount Vernon Campus; the members of the University's Board of Trustees; and the students of the School Without Walls, in organized activities under the supervision of school faculty;

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- (c) persons residing in St. Mary's Court or the Remington Condominiums, or belonging to St. Mary's Episcopal Church; and
  - (d) Alumni of the George Washington University who reside in the Foggy Bottom/West End area as defined in the approved 2007 George Washington University Foggy Bottom Campus Plan.
2. The maximum number of new user privileges authorized by this Order (*i.e.* persons subject to subparagraphs 1(c) or (d) above) shall be 300. At least 50 of the 300 new user privileges shall be allocated to persons subject to subparagraph 1(c) (*i.e.* residents of St. Mary's Court or the Remington Condominiums, or a member of St. Mary's Episcopal Church), and no more than 250 shall be offered to the persons defined in subparagraph 1(d) (*i.e.* University alumni living in the Foggy Bottom/West End area).
3. Approval of the expanded categories of membership enumerated in Condition No. 1 (b), 1(c), and 1(d) shall be effective for five years from the effective date of this Order.

**VOTE:**      **4-0-1** to approve the application with conditions (Anthony J. Hood, Gregory N. Jeffries, Curtis Etherly, Jr., and Michael G. Turnbull to approve; John G. Parsons, not present, not voting);

**3-1-1** to adopt a five-year term of approval for the categories of membership beyond those originally approved by the Board of Zoning Adjustment in Application No. 16276 (Anthony J. Hood, Curtis Etherly, Jr., and Michael G. Turnbull to approve in favor; Gregory N. Jeffries opposed; John G. Parsons, having not participated, not voting).

**BY ORDER OF THE D.C. ZONING COMMISSION**

**Each concurring member approved the issuance of this Order.**

**FINAL DATE OF ORDER:** \_\_\_\_\_

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PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., ("ACT"). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE ACT, THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION THAT IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****ZONING COMMISSION ORDER NO. 07-06****Z.C. CASE NO. 07-06*****Sua Sponte* Review of Board of Zoning Adjustment Application No. 17553****May 14, 2007**

This Decision and Order arise from the *sua sponte* review by the Zoning Commission for the District of Columbia (the "Commission") of an order issued by the Board of Zoning Adjustment ("BZA") that granted BZA Application No. 17553, concerning a request by Naun Segovia, pursuant to 11 DCMR § 3103.2, for variance relief from building height and story limits, rear yard requirements, and open court requirements to allow the expansion of an existing apartment house from 20 units to 34 units in the R-4 district at premises 1327 Euclid Street, N.W. (Square 2861, Lots 4, 76, and 77). The Commission timely decided to invoke its *sua sponte* review authority. As a result of its review of the record and the submission of the Applicant, the Commission hereby reverses the BZA's order and denies the application.

**Procedural History**

The self-certified application was filed with the BZA on September 7, 2006. A public hearing on the application was held January 23, 2007.<sup>1</sup> Parties in the proceeding were the Applicant and Advisory Neighborhood Commission ("ANC") 1B. The BZA granted the application by a vote of 3-2-0 at a public meeting held February 6, 2007. A summary order reflecting the BZA's decision was issued March 2, 2007.

At a public meeting of the Commission, held March 12, 2007, Commissioner Jeffries, who had participated in the BZA proceeding on the application, requested that the Commission exercise its *sua sponte* review of the BZA's decision. The Commission voted 5-0-0 to invoke its *sua sponte* review authority in this case and to stay the BZA's order pending review by the Commission.

At a public meeting on April 9, 2007, the Commission indicated its general consensus of intent to reverse the BZA's order. The parties were invited to submit responses to the concerns raised by the Commission by May 7, 2007.

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<sup>1</sup> At the hearing, the application was amended to eliminate a request for a variance from the prohibition against enlarging a structure devoted to a nonconforming use under § 2002.5.

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By letter dated May 4, 2007, the Applicant requested that the Commission defer its decision in this case while the Applicant pursued an expedited map amendment for approximately one-half of Square 2861, including the subject property, from R-4 to R-5-B. The Applicant indicated that the map amendment would probably be requested by ANC 1B, and after the subject property was rezoned, the Applicant would seek approval of modified design plans for the subject property. ANC 1B did not make a submission to the Commission.

At a public meeting on May 14, 2007, the Commission voted to reverse the decision of the BZA in Application No. 17553, with the stay of the BZA's order continued until this order becomes final.

### **FINDINGS OF FACT**

1. The subject property is located at 1327 Euclid Street, N.W. in the Columbia Heights neighborhood of Ward 1 (Square 2861, Lots 4, 76, and 77).
2. The subject property is an irregularly-shaped parcel with an area of 13,202 square feet, and is improved with a three-story, 20-unit apartment house built in 1961 pursuant to an order of the BZA in Appeal No. 5785 (public hearing January 25, 1960). The building, which is 41 feet in height, extends to the front (southern) and side (eastern and western) property lines. A public alley, which varies in width from 10.5 to 16 feet, extends along the irregular rear property line.
3. The Applicant requested variance relief from the height limit under § 400.1, the side yard requirement under § 405.1, and the open court requirement under § 406.1 to allow construction of a three-story addition that would increase the height of the building to six stories and 60 feet. As proposed, the building would provide six dwelling units on each of the five full floors and two units in both the basement and top floor, for a total of 34 apartments.
4. The proposed building height would exceed – by three stories and 19 feet – the three-story and 40-foot maximums permitted as a matter-of-right in the R-4 district.
5. Properties in the vicinity of the subject property that are zoned R-4 are developed primarily with row dwellings or with three- or four-story apartment dwellings. The R-5-B zone across Euclid Street to the south and southwest of the subject property also contains three- or four-story apartment dwellings, while four- and five-story apartment houses are located in the C-2-B zone along 14<sup>th</sup> Street. All but one of the multi-family buildings in the immediate vicinity of the subject property were constructed before 1958; the exception was a rooming house that was converted to multi-family dwellings in 1962.



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6. The Applicant testified that the existing structure on the subject property presented an exceptional situation or condition in that the building was a "run-down apartment building in a rapidly improving neighborhood" that required renovation "to today's standards" so as to be competitive and not "a blight on surrounding and recently improved properties." The Applicant asserted that high construction costs made renovations impractical, creating financial hardship for the property owner in using the property consistent with the Zoning Regulations.
7. The Applicant contended that approval of the requested variances would not create substantial detriment to the public good or be inconsistent with the general intent and purpose of the Zoning Regulations and Map, because the immediate vicinity of the subject property contained structures that exceed current zoning height and story limits and because the use of the building would remain consistent with the apartment uses permitted in the R-4 zone.
8. The Applicant also testified that the requested variances were needed to carry out the proposed renovation because the building was operating at a loss and faced a competitive disadvantage. The Applicant had rejected alternatives available under applicable rental housing laws to reduce operating losses or defray the costs of improvements to the building due to the Applicant's desire not to raise rents for the building's tenants. According to the Applicant, seven current tenants of the building would be permitted to move back in to the building after its renovation into units that would be maintained as affordable housing.
9. The Office of Planning ("OP") recommended denial of the application for failure to satisfy the three-part test for a grant of a variance, and because the proposal was "clearly contrary to the intent of the R-4 (row dwelling and flat) district." According to OP, the existing building did not constitute an exceptional condition, and the cost of renovations did not create practical difficulties. OP stated that approval of the requested zoning relief, "would be completely contrary to the stated intent of the R-4 district and inconsistent with the character of this district," noting that the proposed addition would result in a building on the subject property whose height and floor area ratio would exceed that permitted as a matter-of-right in the adjacent R-5-B zone. OP concluded that the requested zoning relief could not be granted without substantially impairing the intent, purpose, and integrity of the zone map because approval of application, "would have a significant negative impact on the character and stability of the surrounding single-family neighborhood, and would be contrary to the stated purposes of the R-4 district" to discourage additional apartment uses.
10. At a public meeting held December 7, 2006, ANC 1B voted 7-0 to oppose the application. At a public meeting held January 5, 2007, ANC 1B voted 10-0 to support the application for variance relief from § 400.1. The ANC noted that zoning relief was

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sought, "to construct a building that will greatly serve the neighborhood by continuing to provide low-income rental units; increasing the overall number of units and on-site parking spaces; and creating a façade that is consistent with the design of neighborhood buildings."

### CONCLUSIONS OF LAW

The Zoning Regulations provide that no decision or order of the BZA shall take effect until 10 days after having become final pursuant to BZA rules. 11 DCMR § 3125.9. Within that 10-day period, the Commission may *sua sponte* to review any order or decision of the BZA. 11 DCMR § 3128.1. In this case, the BZA's order was issued March 2, 2007, and the Commission voted within the 10-day period, on March 12, 2007, to invoke its *sua sponte* review authority.

The Commission may exercise *sua sponte* review when (i) the BZA exceeded its prerogatives and thus in effect changed the zoning, (ii) the basic policy of the Commission, as expressed in the Zoning Regulations, was violated as a result of BZA action, or (iii) in an unusual instance, as determined by the Commission. 11 DCMR § 3128.7. Upon *sua sponte* review, the Commission action may include reversal of the BZA's decision or order. 11 DCMR § 3128.4(b).

In this case, the Commission concludes that the BZA exceeded its prerogatives and in effect changed the zoning of the subject property by granting the requested variances. The Commission reverses the BZA's decision because the Applicant failed to satisfy any of the three prongs of the test for variance relief, and because the magnitude of the requested variances, which would have allowed a building larger than that permitted as a matter-of-right in higher-density zone, would have effectively changed the zoning of the subject property.

The BZA is authorized to grant a variance from the strict application of the Zoning Regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any Zoning Regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2. To justify the grant of a variance, an applicant must satisfy a three-prong test by demonstrating: (1) that the subject property was affected by an extraordinary or exceptional situation or condition, (2) that, because of the situation or condition, the strict application of the Zoning Regulations would result in practical difficulties to the applicant, and (3) that the variance can be granted without causing substantial detriment to the public good or substantially impairing the intent, purpose, and integrity of the Zoning Regulations and Map.

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In this case, the Commission finds that the Applicant did not satisfy any of the three prongs necessary to justify the grant of the requested variances. The subject property is not unusual in its shape or topography, or in its need for renovation of an aging building. The Commission does not credit the Applicant's claims that financial hardship necessitated the proposed renovation plan, in part because the evidence provided by the Applicant unpersuasively suggested that the building currently experiences higher operating costs, with 20 units, than would the 34-unit building after a major renovation. Moreover, the Applicant opted not to seek relief available through the rent control program to help fund building improvements. The Commission applauds the Applicant's intention to provide affordable housing in the project, but does not agree that the planned seven units of affordable housing – which lacked a guarantee of long-term affordability – justified the grant of variances.

The Commission also concludes that approval of the requested variances – which were of a magnitude such that the proposed building would significantly exceed the maximum height and number of stories permitted in the R-4 district, and even exceed the height and floor area ratio permitted in the R-5-B zone mapped nearby – would in effect rezone the subject property. The Commission credits the conclusion of OP that the requested variances would be contrary to the purposes of the R-4 district to stabilize the remaining one-family dwellings and not to serve as an apartment house district, and therefore that approval of the application would substantially impair the intent, purpose, and integrity of the Zoning Map.

The Commission's action in this *sua sponte* review of a decision by the BZA is a separate matter independent of the Applicant's recently stated intention to seek a map amendment affecting the subject property. Accordingly, the Commission was not persuaded by the Applicant's submission of May 4, 2007, not to reverse the BZA's decision to grant the requested variances.

The Commission, on May 14, 2007, voted 5-0-0 to **REVERSE** in its entirety the decision of the Board of Zoning Adjustment in Application No. 17553 and to deny the application, and to continue to stay the Board's order until this Order becomes final (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, Michael G. Turnbull, and John G. Parsons to reverse).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register on \_\_\_\_\_.

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